

**FINAL REPORT WITH AMENDMENTS  
MADE BY CITY COUNCIL**



**REPORT OF THE 2013 KERRVILLE  
CHARTER REVIEW COMMISSION**

**John M. Mosty, Chair  
Bruce Motheral, Vice-Chair  
Glenn Andrew  
Harvey Brinkman  
Joe Herring, Jr.  
Tom Myers  
Gene Smith**

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**September 5, 2013**

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Honorable Mayor and City Councilmembers:

We, the members of the 2013 Charter Review Commission (“CRC”), held a series of meetings to review the Kerrville City Charter and consider whether any amendments are necessarily or desirable. Our review was in strict conformance with the *City Council Charge to and Schedule for the Charter Review Commission*, dated December 11, 2012. Pursuant to the Charge, we held 11 meetings. We allowed public input at each meeting.

We have concluded our work and present this report to you. As you will see, the report identifies various amendments that we believe should be submitted to City voters for consideration at the May 10, 2014, election.

This report begins with a summary of our recommendations. The summary is followed by the actual text of each of the proposed substantive amendments. Within the text of the amendments, blue underlining indicates language proposed to be added and ~~bracketed red overstrike~~ indicates language proposed for deletion. Each of the proposed text changes is followed by a brief statement of the CRC’s rationale for proposing the change.

We appreciate the opportunity to serve you and the citizens of our community through the Charter review process.

Respectfully submitted,

Members of the Kerrville 2013 Charter Review Commission

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John M. Mosty, Chair

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Bruce Motheral, Vice-Chair

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## **I. SUMMARY OF RECOMMENDATIONS**

1. Delete Section 1.03 regarding the filing of a claim against the City to conform to state law.
2. Amend Section 2.04 to address vacancies, including a vacancy resulting from a recall election.
3. Amend Section 3.02 to clarify the Mayor's authority during emergencies.
4. Amend Section 4.03 to increase the number of signatures required for a candidacy petition and to waive the signature requirement where a filing fee is paid.
5. Amend Section 4.08 regarding the canvassing of elections to conform to state law.
- ~~6. Amend Section 5.04 to revise the signature requirements for a recall petition.~~
7. Amend Section 5.10 to revise the process for a vacancy created as the result of a recall.
8. Delete Section 5.11 regarding time restrictions with respect to the use of recall.
- ~~9. Amend Section 5.12.a. to revise the signature requirement for an initiative petition.~~
- ~~10. Amend Section 5.13.a. to revise the signature requirement for a referendum petition.~~
11. Amend Section 8.07 to require that an ordinance is used for a budget amendment.

## **II. SUBSTANTIVE REVISIONS**

**Delete Section 1.03 regarding the filing of a claim against the City to conform to state law.**

### **~~[Section 1.03. Special Provision for Damage Suits.~~**

~~Before the City shall be liable to damage claim or suit for injury to one's person or property, the person who is injured or whose property is damaged or someone in his behalf shall give the City Manager or City Secretary notice in writing within thirty (30) days after the occurring of the alleged injury or damage, stating specifically in such notice when and how the injury or damage was sustained, and setting forth the extent of the injury or damage as accurately as possible. No action at law for damages shall be brought against the City for injury to one's person or property prior to the expiration of sixty (60) days after the notice hereinbefore described has been filed with the City Manager or City Secretary. After the expiration of sixty (60) days aforementioned, the complainant may then have two (2) years in which to bring an action at law. Any provisions hereof which are in conflict with the Texas Tort Claims Act shall be null and void and of no effect and the provisions of such act as it now exists, or as it may hereafter be amended, shall control.]~~

**Rationale:** Texas law, specifically the Texas Tort Claims Act ("Act"), establishes when cities are liable for various actions and conditions. The Act sets out the required process to use when making a claim or filing suit against a city, possible defenses and immunities for cities, and the amount of monetary damages that may be recovered where immunity is waived. As such, the Charter Review Commission ("CRC") believes Section 1.03 is unnecessary as it is addressed and superseded by state law.

**Amend Section 2.04 to address vacancies, including a vacancy resulting from a recall election.**

### **Section 2.04. Vacancies.**

Vacancies in the City Council, including a vacancy resulting from a recall election, shall be filled by the Council for the remainder of the unexpired term~~[, but any vacancy resulting from a recall election shall be filled in the manner provided in such cases]~~. The Council shall ~~[may]~~ appoint a qualified elector to fill a vacancy within thirty ~~ten (30)~~ days after such vacancy occurs. For purposes of this section and the Charter, a "qualified elector" or "qualified voter" means a "registered voter" in accordance with state law. [; ~~provided, that there was prior notification of such vacancy. If there is no prior notification, the City Council may fill the vacancy within thirty (30) days of such vacancy. In the absence of such Council action, a special municipal election shall be called and the vacancy shall be filled at the next authorized election date in accordance~~

~~with state law. The order for election shall be called by the Mayor, or in his absence or incapacity, the Mayor Pro Tem, or in his absence or incapacity, the City Manager.]~~

**Rationale:** This amendment is intended to address the following issues:

- 1) despite the existing language, there is no provision within the Charter as to how a vacancy resulting from a recall election is addressed. This amendment clarifies what happens where a vacancy results from a recall election;
- 2) the CRC recommends a simpler process for when a vacancy occurs; for example, “prior notice” was not defined and could lead to confusion or arguments. As a remedy, this amendment makes it mandatory that Council fill a vacancy within 30 days;
- 3) the City Secretary informed the CRC that a November special election would cost the City in excess of three times the cost of a May election. Thus, the CRC believes that authorizing the Council to make an appointment for the unexpired term and not calling an election is appropriate and may save money;
- 4) the CRC recommends defining “qualified elector” and “qualified voter” in the same way as the Texas Election Code, which defines these terms as a “registered voter”;
- 5) the CRC recommends deleting the last sentence as it is unnecessary where Council has the authority to make an appointment.

<b>Amend Section 3.02 to clarify the Mayor’s authority during emergencies.</b>
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### **Section 3.02. Mayor and Mayor Pro Tem.**

Following the canvass of a regular election, the Council shall choose one of its members (other than the Mayor) as Mayor Pro Tem. The Mayor shall preside at meetings of the Council and shall exercise such other powers and perform such other duties as are or may be conferred and imposed upon him by this Charter and the ordinances of the City. He shall be recognized as the head of the City government for all ceremonial purposes, by the courts for serving civil processes, and by the Governor for purposes of military law. In time of public danger or emergency, the Mayor ~~[ shall, if so authorized and directed by vote of the Council, take command of the police, maintain order, and enforce the law]~~ is authorized to act in accordance with federal and state law and City policy. If a vacancy occurs in the Office of Mayor, the Council shall appoint a successor Mayor for the remaining term, in accordance with Section 2.04. If the Mayor is absent or disabled, the Mayor Pro Tem shall act as Mayor for the duration of the period of such absence or disability. If the Mayor Pro Tem is also absent or disabled, then the Council shall elect a Presiding Officer to act in the place of the Mayor Pro Tem.

**Rationale:** The CRC believes that the Mayor must have the authority to act in times of emergencies in accordance with federal and state law and City policy, such as the City's Emergency Management Plan. In other words, the Mayor's authority should not be dependent upon and derived from Council action because in part, Council may not be available to act. Thus, the CRC recommends amending this section to make it clear that the Mayor may act in times of emergencies without prior Council approval. In addition, where a vacancy occurs in the office of the Mayor, the CRC recommends clarifying that Council must appoint a replacement in accordance with Section 2.04.

**Amend Section 4.03 to increase the number of signatures required for a candidacy petition and to waive the signature requirement where a filing fee is paid.**

#### **Section 4.03. Application for Candidacy.**

Any person who lawfully qualifies, and is, a registered voter may file an application for election for a Place on the City Council. The name of such candidate and Place for which he is filing will be affixed by the City Secretary at the time of issuance of an application form. Such application shall include a petition signed by not less than 100 ~~[75]~~ qualified and registered voters of the City. The application and the signatures thereon as well as the affidavits of the circulators shall meet the requirements of state law. All papers comprising an application shall be assembled and filed with the City Secretary in accordance with state law ~~[and shall include a filing fee of \$25.00. The filing fee shall be waived where the petition includes the signatures of not less than 100 qualified and registered voters of the City.]~~ Signatures are not required where the application includes a filing fee of \$100.00. The City Secretary shall review the petition as required by state law and if the petition is found to be insufficient, the City Secretary shall return it immediately to the person who filed it, with a written statement certifying why the petition is found to be "insufficient." Within the time authorized by state law such a petition may be amended and filed again as a new petition, or a different petition may be filed for the same candidate. If the application complies with this section and state law, the City Secretary shall place such name on the ballot. Application forms shall be obtained from the City Secretary, as they are promulgated by the Texas Secretary of State.

**Rationale:** After reviewing what other Texas cities require for candidate applications, the CRC recommends increasing the number of signatures required from 75 to 100. In addition, the CRC recommends allowing a candidate to pay a filing fee of \$100.00 instead of submitting the signatures.

**Amend Section 4.08 regarding the canvassing of elections to conform to state law.**

#### **Section 4.08. Canvassing Elections.**

The City shall conduct an election canvass following a general or special election in accordance with state law.

~~[All elections held under this Charter, whether for the choice of candidates or for the submission of questions to the electors, shall be conducted in accordance with general election laws of the State of Texas; and except as otherwise provided in this Charter, such general laws shall be applicable to and control all such elections. The election judges and other necessary election officials for conducting all such elections shall be appointed annually by the City Council. The election judges shall conduct the elections, open the ballot boxes, take therefrom and count the ballots, whether for candidates or questions, and enter the result on the tally sheet as provided by the general election laws, or as may be provided by ordinance. They shall certify the count so made, seal the tally sheet up with their certification and return it at once to the City Secretary. On the first Tuesday after the election, the present City Council shall meet, open the returns, canvass and officially declare the results of the election as to candidates and questions, and issue certificates of election to candidates elected as hereinbefore provided.]~~

**Rationale:** Changes in Texas election law make it necessary to revise this section. The City must canvass in accordance with state law, which supersedes the Charter.

**Amend Section 5.04 to revise the signature requirements for a recall petition.**

#### **Section 5.04. Petitions for Recall.**

~~Before the question of recall of a Councilmember shall be submitted to the qualified voters of the City, a petition demanding such question to be so submitted shall first be filed with the City Secretary. The petition must contain the number of valid signatures of qualified voters totaling the greater of [(a) five percent (5%) of the registered voters entitled to vote at the last City election,] (a [b]) twenty [thirty five] percent (20 [35] %) of the number of persons who voted in the most recent City election or [, but in no case fewer than the signatures from three] two hundred (200 [300]) qualified voters [registered to vote in the City]. Each signer of such recall petition shall personally sign their name thereto and shall write after their name their place of residence, giving the name of the street and the number, and shall also write thereon the day, the month, and the year their signature was affixed.~~

**Rationale:** The CRC believes that this amendment is clearer and provides a more reasonable threshold for securing a valid recall petition.

**Amend Section 5.10 to revise the process for a vacancy created as the result of a recall.**

**Section 5.10. Result of Recall Election.**

a. If a majority of the votes cast at a recall election shall be “No”, that is against the recall of the Councilmember named on the ballot, the Councilmember shall continue in office for the remainder of his/her unexpired term, subject to recall as provided herein. If a majority of the votes cast at such election be “Yes”, that is for the recall of the Councilmember named on the ballot, the Councilmember shall, regardless of any technical defects in the recall petition, be deemed removed from office upon passing of the resolution canvassing the election, and the vacancy shall be filled in accordance with Section 2.04 above.

b. Where a vacancy(s) occurs due to a recall election, the remaining Councilmembers, including where the remaining Councilmembers number two or less, shall appoint a qualified elector(s) for the recalled place(s), which such person(s)s may serve only through the canvassing of the next municipal election. The appointed person(s) may choose to become a candidate at such election but in any case, the person elected at the election will only serve through the remainder term, if applicable.

c. A Councilmember who is recalled is ~~[shall]~~ not ~~[be]~~ eligible for appointment to Council in the period between the recall vote and the next election or qualified for placement on the ballot for the immediately ensuing election.

**Rationale:** The CRC recommends amending this section so that it is clear what happens after a successful recall election and that in the instance where two or less Councilmembers remain, the remaining Councilmembers, even if less than a majority of the entire Council, have the authority to fill the vacancies. The CRC also recommends adding that a recalled Councilmember is not eligible for appointment for a period of time.

**Delete Section 5.11 regarding time restrictions with respect to the use of recall.**

**~~[Section 5.11. Recall Restrictions.]~~**

~~[No recall petition shall be filed against any Councilmember within six (6) months after the Councilmember's election, within the last six (6) months of the Councilmember's term, nor within six (6) months after an election for such Councilmember's recall.]~~

**Rationale:** The CRC recommends deleting Section 5.11. With these restrictions in place, two-year terms, and the mandated process and timelines for calling an election under the Texas Election Code, there is a very small period of time that a recall could occur making the current recall provision not very effective.



**Amend Section 5.12.a. to revise the signature requirement for an initiative petition.**

#### **Section 5.12. Initiative; Petition; Procedure.**

a. Qualified voters of the City may initiate legislation by ordinance by submitting a petition addressed to the City Council, which requests the submission of the proposed ordinance to a vote of the qualified voters of the City. The City Attorney shall review the petition for enforceability and legality. Said petition must contain the number of valid signatures totaling the greater of ~~[(a) five percent (5%) of the registered voters entitled to vote at the last City election,]~~ (a [b]) ~~twenty [thirty five]~~ percent (~~20 [35]~~ %) of the number of persons who voted in the most recent City election ~~or [but in no case fewer than the signatures from three]~~ ~~two~~ hundred (~~200 [300]~~) qualified voters ~~[registered to vote in the City]~~. Each copy of the petition shall have attached to it a copy of the full text of the proposed ordinance. The petition, its form and content, shall be the same as for recalls as provided in Section 5.05 above. The certification of the City Secretary, and any amendment to the petition and its presentation to City Council shall be the same as for recalls as provided in Section 5.06 above.

**Rationale:** The CRC believes that this amendment is clearer and provides a more reasonable threshold for securing a valid initiative petition.

**Amend Section 5.13.a. to revise the signature requirement for a referendum petition.**

#### **Section 5.13. Referendum; Petition; Procedure; Effect Prior to Election.**

a. Qualified voters of the City may require that any ordinance, with the exception of ordinances dealing with any budget or any capital program, or relating to appropriation of money, issuing of bonds, setting of utility rates and levy of taxes or salaries of City officers or employees, or any other ordinance not subject to referendum as provided by state statute or case law, passed by the City Council be submitted to the voters of the City for approval or disapproval, by submitting a petition for this purpose within ten (10) days after the date the ordinance sought to be reconsidered was adopted. Said petition must contain the number of valid signatures totaling the greater of ~~[(a) five percent (5%) of the registered voters entitled to vote at the last City election,]~~ (a [b]) ~~twenty [thirty five]~~ percent (~~[35]20~~%) of the number of persons who voted in the most recent City election, ~~or [but in no case fewer than the signatures from three]~~ ~~two~~ hundred (~~200 [300]~~) qualified voters ~~[registered to vote in the City]~~. The petition, its form and content, shall be the same as for recalls as provided in Section 5.05 above. The certification of the City Secretary, any amendment to the petition and its presentation to City Council shall be the same as for recalls as provided in Section 5.06 above. Council shall either repeal the referred ordinance or submit the referred ordinance to the qualified voters of the City within thirty (30) days after the date the petition was finally determined sufficient.

**Rationale:** The CRC believes that this amendment is clearer and provides a more reasonable threshold for securing a valid initiative petition.

**Amend Section 8.07(d) to require that an ordinance is used for a budget amendment.**

#### **Section 8.07. Amendments after Adoption.**

**d. Transfer of Appropriations.** At any time during [~~or before~~] the fiscal year, the City Council may by ordinance ~~resolution~~ transfer part or all of the unencumbered appropriation balance from one department, fund, or organizational unit to the appropriation for other departments or organizational units or a new appropriation. The manager may transfer funds among programs within a department, fund, or organizational unit and shall report such transfers to the Council in writing in a timely manner.

**Rationale:** Under the “equal dignities” rule, an ordinance, as one example, may only be amended by an ordinance. The same rule generally applies to a resolution or any other type of written legal instrument. As such, in order to authorize an amendment to the City’s budget, which is adopted each year by ordinance, an amendment must be in the form of an ordinance. Thus, the CRC recommends amending this section to reflect this rule.